

**Testimony of Radiological Society of Connecticut, Inc.
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**An Act Concerning the Certificate of Need Process
House Bill No. 5447**

To Senator Harris, Representative Ritter and distinguished members of the Public Health Committee: This testimony is presented on behalf of the Radiological Society of Connecticut, Inc. ("RSC") by Marc Glickstein, M.D., immediate past President, and Alan D. Kaye, M.D., Legislative Chair. We thank you for this opportunity to testify on behalf of RSC in opposition to certain aspects of House Bill No. 5447, An Act Concerning the Certificate of Need Process.

RSC is the constituent state entity of the American College of Radiology. It is a non-profit organization of approximately 400 radiologists having the organizational purpose, *inter alia*, of serving patients and society by advancing the science of radiology, improving radiological service to the patient, prescribing standards and guidelines regarding quality and safety of medical imaging, studying the socioeconomic aspects of the practice of radiology, and encouraging improved and continuing education for radiologists and allied professional fields. Our practicing member radiologists are Board Certified physicians in academic and private practice working in their own offices and/or providing and overseeing radiology services in hospitals. Both in Connecticut and nationally, a majority of imaging procedures are performed in outpatient, non-hospital settings and, as recognized by CMS, MedPAC, and the OIG, this percentage continues to grow (*see Medicare In-Office Imaging – U.S. attached*). Accordingly, organizations like

RSC have become increasingly active in advocating on behalf of their member physicians who provide outpatient imaging services.

CON Law Background

Certificate of Need ("CON") laws exist to ensure access to healthcare services, to promote quality care and to control the cost of healthcare services. For more than 30 years, Connecticut has had CON laws on the books that regulate services and expenditures undertaken by hospitals and other health care facilities. These laws also regulate the acquisition of major imaging equipment (MRI, CT, PET, PET-CT) by hospitals, imaging centers, radiologists and other private practice physicians. CON laws have effectively constrained the rampant growth of imaging in Connecticut as compared with other states in the region (*see* U.S. map attached).

Connecticut's CON laws were enacted with an eye toward equity in the regulation of different types of providers. Now comes House Bill 5447, which represents a complete overhaul of Connecticut's CON laws, both in substance and in process, and which if passed in its present form will result in the inequitable treatment of private practice physicians and other non-hospital providers. This inequitable treatment will be detrimental to our member radiologists, as well as their patients, and will negatively impact access and the quality and cost of healthcare services throughout the state. This is not the intent of the CON laws.

Inequitable Regulation of Imaging Equipment Acquisitions; Implications For Other Providers; Access to State-of-the-Art Care; State Fiscal Health

Under current law, CON approval is required in order for any person or entity to acquire major imaging equipment, regardless of cost. This includes hospitals, imaging centers, radiologists and other physicians/providers (i.e. orthopedists, neurologists, urologists, and dentists). This level regulatory playing field has existed for many years and has served to control the proliferation of imaging equipment, the unnecessary duplication of services and overutilization. Connecticut is in the second lowest quartile for Medicare imaging utilization with lower utilization rates than neighboring states and others in the region (see U.S. Map attached). This is evidence that, in the context of imaging, Connecticut's CON laws are effective in controlling utilization and, ultimately, costs.

With House Bill 5447, the Department of Public Health, Office of Health Care Access Division ("DPH/OHCA") proposes to eliminate the requirement that hospitals obtain CON approval prior to acquiring major imaging equipment. At the same time, DPH/OHCA proposes continued regulation of these types of acquisitions by non-hospital providers, namely radiologists and other physicians. The consequences of deregulating one segment of the industry at the expense of others are immeasurable and inevitable. Without regulation, hospitals will be able to acquire major imaging equipment for use not only at their main campuses and service area satellites, but essentially anywhere in the state. More financially secure hospitals will be able to open outpatient imaging centers directly adjacent not only to radiologists' offices, but to less financially secure hospitals, and in doing so siphon away the outpatient services upon which the weaker hospitals

rely. This could create a situation where only a few hospitals control all of the well-paying outpatient exams in the state at risk of financial distress for all the other hospitals. This would put the state in the position of having to provide additional financial assistance to these hospitals.

Moreover, fact that hospitals will be able to establish imaging services in any markets they choose will effectively preclude the acquisition of additional major imaging equipment in those markets by non-hospital providers. DPH/OHCA has proposed CON decision criteria that include, among other things, an assessment of what major imaging equipment exists in a community and whether the acquisition of additional equipment will result in the unnecessary duplication of services. If hospitals are free to acquire and utilize imaging equipment wherever they choose without any regulation or oversight by DPH/OHCA, it is unlikely that radiologists and other physicians will ever be able to fulfill the criteria for new equipment or establish that the acquisition of such equipment will not result in the unnecessary duplication of services.

This one-sided regulation will preclude radiologists in an outpatient setting, who provide a majority of this state's imaging services, from acquiring the state-of-the-art technology necessary for optimal patient care. Most non-hospital outpatient imaging sites in Connecticut are owned by radiologists. These providers are almost universally accredited by the American College of Radiology ("ACR"). In fact, under a state law initiated by our member radiologists initiated what became the first state law in the country that requires ACR accreditation for all MRI units operating in Connecticut. New types of

imaging examinations are continually being developed, requiring new types of machines and applications. All providers, not just hospitals, need to be able to acquire new technology as needed in order to provide the safest and most effective examinations for their patients. For example, the relatively new technology of PET scanning is increasingly being used to detect cancer and determine the effectiveness of treatment. It is replacing some of the examinations done by CT and MRI, and it will someday become necessary and standard equipment for all viable imaging providers. If House Bill 5447 is enacted, private radiologists will be disadvantaged in acquiring such equipment. If a hospital decides, unilaterally, to purchase in a PET scanner without any regulatory oversight, then physicians who do imaging now will not be able to fulfill all the criteria for a successful CON application for this type of equipment. This will in turn adversely impact the quality of care being delivered to patients.

There are many private radiology practices in the state of Connecticut. These providers contribute substantially to our economy. The inequitable regulatory scheme proposed in House Bill 5447 will have a significant adverse impact on many of these practices, possibly even causing some to close office or go out of business altogether. Physicians who purchase these multi-million dollar machines pay sales and personal property taxes. Hospitals are almost universally tax-exempt. Important revenues will be lost to the state's treasury. Also, there are radiology practice in this state that employ as many as 200 to 400 people. Jobs will be lost in our state, and this would be unconscionable.

Furthermore, radiology groups are significant participants in the healthcare system in our state and are significant providers of “safety net” services to Medicare, Medicaid and uninsured patients. DPH/OHCA suggests in its CON reform recommendations that hospitals need to be given some form of favored status in the CON process because they are the ones who provide services to these vulnerable patient population. These suggestions are misleading. Looking at three of the largest private radiology practices in the state, their payer mixes average 23.4% for Medicare, 7.39% for Medicaid and 4.9% for self-pay patients. This means that more than 1/3rd of the patients being treated by these providers (35.69%) fall within the populations for which DPH/OHCA targets preservation and enhancement of services. Enacting CON laws that may put private radiologists out of business will not accomplish these objectives.

Lastly, DPH/OHCA justifies exempting hospitals from CON requirements for the acquisition of imaging equipment and other service offerings on the grounds that hospital administrators and boards of directors exercise careful judgment in making investments only in those projects that will benefit the hospital. This assumption should not simply be accepted as true. As many will recall, the Commission on Hospitals and Health Care (the predecessor agency to OHCA) was established largely for the purpose of protecting against unnecessary and ill-advised spending by hospitals. In fact, it may be more important for hospitals to justify, through a regulatory process, that their projects are financially feasible and advisable given the fact that the facilities are subsidized by taxpayer monies. A hospital that established an outpatient imaging site adjacent to an already established private radiology practice, having not justified the need for the

service, risks failure and financial harm at the taxpayer's expense. We are not suggesting that hospital administrators and boards are reckless, rather, that their internally generated business plans are not always completely accurate and, therefore, not necessarily appropriate justifications for exempting hospitals from the CON process. If it were an appropriate justification, then it could be said as well that private radiologists who, without the safety net of the public treasury, invest our own money in a field that we know better than anyone are equally (if not more) prudent in doing so.

Definition of a Health Care Facility

Under the proposed law, the definition of healthcare facility appears to include anyone for whom a CON is required (*see* H.B. 5447, lines 56-67 “‘Health care facility’ means ... (F) and any other facility requiring certificate of need review pursuant to subsection (a) of section 19a-638, as amended by this act.”). This means that a private physician practice that obtains a CON for the purchases of major imaging equipment in accordance with Conn. Gen. Stat. Section 19a-638(a)(9) (*see* H.B. 5447, lines 363-368) would arguably become a healthcare facility, subjecting itself to CON jurisdiction for transfers of ownership and the like. There is no reason whatsoever for DPH/OHCA to involve itself in the business affairs of private physicians or to conduct de novo reviews of the need for imaging equipment that has been operating within a practice for years, simply because the practice has acquired new equipment under a CON approval. Moreover, at a time when OHCA is trying to lessen the burdens on both the agency and providers, bringing many private physician practices under the full jurisdiction of OHCA seems counterintuitive.

Exemption for Imaging Equipment Acquisitions By Dentists

House Bill 5447 includes an exemption from CON requirements for the “[a]cquisition of cone-beam dental imaging equipment by a dentist licensed pursuant to chapter 379.”

RSC is not in favor of this exemption. As RSC testified, and OHCA agreed, in a recent declaratory ruling process, these machines are CT scanners. As such, they produce and expose patients to significant radiation. As has been demonstrated in many research studies, when doctors own their own imaging equipment, the utilization rises 2-7 times that when the examinations are referred to hospitals and independent imaging centers. This will be no different. We are most concerned that the exemption may allow dentists to acquire equipment not only for their own use, but to lease to specialty physician providers for use with their patients. Allowing physicians to circumvent the CON process in this manner would be unfair and would have the same deleterious effects as described above with respect to hospital deregulation. We would therefore suggest that, if the General Assembly agrees to an exemption for cone-beam dental imaging equipment, the language should specifically state that “any utilization of this equipment is for use only by dentists for diagnosis and treatment of dental conditions on their patients only.”

Proposed Changes To Administrative Processes Will Not Reduce Administrative Burdens

RSC also has additional, significant concerns regarding the new administrative processes for CON proposed by DPH/OHCA in House Bill 5447. Specifically, RSC is concerned about the one-year timeframe for CON project implementation. The acquisition and

installation of major imaging equipment is a complicated and oftentimes lengthy process. DPH/OHCA has recognized this fact and has in the past allowed providers upwards of two years to install these types of machines. Now, radiologists and other physicians will have the added burden of requesting and justifying the need for additional time to implement a project beyond the one-year statutory limit being proposed. At the same time, physicians will need to respond to competitors who will be given the opportunity to contest requests for additional time. We believe that this process is ripe for abuse by those looking to derail CON projects in order to gain competitive advantage.

Perhaps even more concerning is the fact that if hospitals are not required to go through the CON process, a hospital might be able to install a competitive imaging center without the knowledge of the physician practice or DPH/OHCA during the year or two that the new service is being implemented by the physicians, thereby rendering the physicians' investment a losing proposition. No physician group will be willing to upgrade existing or purchase new equipment under the scepter of unregulated hospital competition.

In addition, DPH/OHCA is giving itself the unilateral right to withdraw, revoke or rescind a CON if it does not believe that a provider is making good faith efforts to implement the project. This not only offends all notions of due process, but it will likely result in providers having to re-file CON applications for approved projects, thus increasing the administrative burden on the system. None of these suggested changes comport with OHCA's stated objectives, to reduce administrative processes and make the CON process more efficient for all involved.

Conclusion

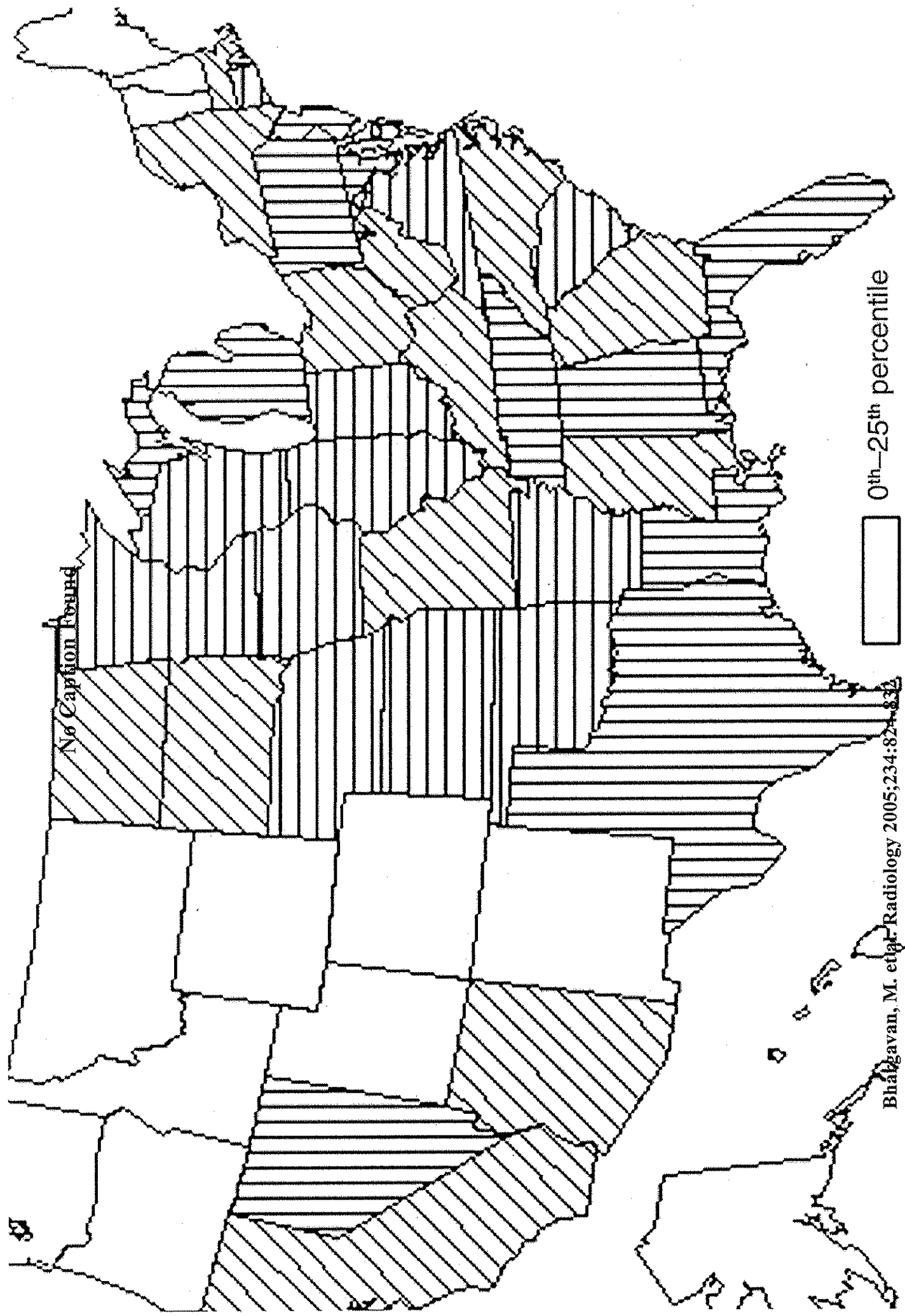
RSC believes that House Bill 5447 is in some parts ill-conceived and will not help to achieve the stated objectives of CON reform. DPH/OHCA is misguided in its belief that the large-scale deregulation of hospital CON will improve the financial stability of the healthcare system and ensure access to safety net services for vulnerable patient populations. On the contrary, this proposed bill would adversely impact the already tenuous financial condition of certain hospitals and also put the substantial investments of radiology practices at significant risk. Allowing hospitals carte blanche to acquire major imaging equipment will lead to the unnecessary duplication of services and expenditures to the detriment of these providers and the system as a whole. House Bill 5447 ignores the historical reasons for the necessity of the CON process, one of which was to protect the state through oversight of hospital spending.

The proposed deregulation will have a significant adverse impact on the outpatient providers who provide most of our imaging services and who treat their fair share of Medicare, Medicaid and self-pay patients. It will thereby disrupt access to high quality care by all patients in the state. CON laws are supposed to promote appropriate competition and control healthcare costs. With these principles in mind, there is no justification for allowing hospitals, which are reimbursed for imaging services by private and governmental payers at substantially higher rates than private physician providers, to have an unfair advantage under the law. DPH/OHCA has also stated that CON reform is

one step towards much-needed statewide health planning. It is inconceivable that we could have a functional statewide health plan that does not contemplate regulation of one of the state's largest provider groups in an area as significant as imaging. Any such plan would be meaningless.

If House Bill 5447 is passed as proposed, RSC's member radiologists and their patients will suffer irreparable harm, legitimate state health planning will be difficult if not impossible and the cost of healthcare in Connecticut will escalate. We urge you to give careful consideration to this bill and to make appropriate changes before passage.

Thank you and we are available to answer any questions that you may have.



No Caption Found

Bhalgavan, M. et al. Radiology 2005;234:824-832